

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

UNITED STATES OF AMERICA, :
: Plaintiff, :
: v. : Criminal Action No. 99-33-2-JJF
: :
: LEROY COLEY, :
: Defendant. :
: :
: :
: :

MEMORANDUM ORDER

Pending before the Court is a Motion For An Out Of Time Appeal (D.I. 309) filed by Defendant. Defendant does not identify which Order of the Court that he seeks an extension of time to appeal; however, the Court reads the Motion to request leave to file an appeal out of time from the Amended Judgment Order entered after his resentencing. To this effect, Defendant appears to allege that he has good cause, because his counsel provided ineffective assistance by failing to file an appeal from the Amended Judgment.

Defendant was resentenced on June 25, 2001, and the Amended Judgment was entered on the docket on June 26, 2001. Pursuant to Federal Rule of Appellate Procedure 4(b) (4), the Court may "upon a finding of excusable neglect or good cause . . . before or after the time has expired, with or without notice--extend the time to file a notice of appeal for a period not to exceed 30 days from the expiration of the time otherwise prescribed by Rule

4(b)." (emphasis added). Pursuant to Rule 4(b)(1), Defendant was required to file his notice of appeal within ten (10) days of the date his Amended Judgment was entered. As such, Defendant had 40 days from the entry of his Amended Judgment to file for an extension of time to appeal. United States v. Arrate-Rodriguez, 2005 WL 345753, *4 (11th Cir. Dec. 20, 2005). Because Defendant's Motion For An Out Of time Appeal was filed well-beyond this period of time, the Court concludes that Defendant is not entitled to relief. United Stats v. Hough, 142 Fed. Appx. 759 (4th Cir. 2005) (holding that district court lacks jurisdiction to grant an extension beyond period set forth in Rule 4(b)); United States v. Lujan, 117 Fed. Appx. 375 (5th Cir. 2005) (same).

NOW THEREFORE, IT IS HEREBY ORDERED this 2 day of March 2006 that Defendant's Motion For An Out Of Time Appeal (D.I. 309) is DENIED.



UNITED STATES DISTRICT JUDGE